IN THE

Supreme Court of the United States

JOHN ELMER INGRAM AND ROBERT STEPHENS POSS,

Petitioners in Certiorari,

VS.

UNITED STATES OF AMERICA,

Respondent in Certiorari.

Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit.

Now comes JOHN ELMER INGRAM AND ROBERT STEPHENS POSS, Petitioners in Certiorari, and petitions this Honorable Court for the writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED

Petitioners were indicted and tried jointly in the United States District Court for the Northern District

of Georgia, Atlanta Division, on a two count indictment charging them with possessing and concealing 40 gallons of non-tax-paid distilled spirits. They were both found guilty by a jury and sentenced by the Court. Their appeals to the 5th Circuit Court of Appeals was based on their contention that the evidence in the case on behalf of the Government, being circumstantial, was not sufficient to authorize a conviction on either count of the indictment because, as they contended, it failed to exclude every other reasonable hypothesis save that of the guilt of the accused. The Court of Appeals, in affirming the conviction, disregarded this fundamental rule of criminal law and held that a conviction would be upheld if there is any substantial evidence in the record to sustain it, taking the view most favorable to the Government. A petition for rehearing was denied.

JURISDICTIONAL STATEMENT

(a) This Court has jurisdiction to review the judgment of the United States Court of Appeals for the Fifth Circuit under and by virtue of Title 18, Section 3772 of U. S. C. A. and within the time prescribed in Rule XI of the Rules of Practice and Procedure, promulgated May 7, 1934 (292 U. S. 661, 666, 54 S. Ct. XXXIX).

(b) The statutes of the United States which are involved are as follows:

Section 5008 Internal Revenue Code of 1954:

"No person shall transport, possess, buy, sell, or transfer any distilled spirits, unless the immediate container thereof has affixed thereto in such manner as to be broken on opening the container, a stamp evidencing the

tax or indicating compliance with the provisions of this chapter."

Section 7206 Internal Revenue Code of 1954:

"Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by Section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title;"

(c) Judgment of the United States Court of Appeals for the Fifth Circuit affirming the judgment of the trial court was filed March 1, 1957, and the petition for rehearing in said case was denied by said Court on March 29, 1957.

(d) The nature of the case and the rulings of the Court were such as to bring the case within the jurisdictional provisions relied upon, and the grounds upon which it is contended that the questions involved are substantial are as follows:

(1) The United States Court of Appeals for the Fifth Circuit has decided an important question of federal practice which should be settled by this Court.

(2) The Decision of the Circuit Court of Appeals is in conflict with the accustomed procedure relating to the necessary amount of evidence to sustain a verdict of conviction in criminal cases based upon circumstantial evidence.

THE QUESTIONS PRESENTED

Where a conviction in a criminal case in the federal

court is based upon circumstantial evidence, and the circumstances in evidence point just as equally to the hypothesis of innocence as that of guilt, should the verdict be construed most strongly in favor of the Government and against the defendant, or should the rule requiring the evidence to exclude every other reasonable hypothesis save that of the guilt of the accused apply?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

The Court of Appeals in this case relied upon the case of Glasser v. United States, 315 U. S. 60, as authority for their holding that a verdict must be construed in favor of the Government.

Petitioners most respectfully urge that the rule of law laid down by this Court in the Glasser case, supra, should be applicable only in cases involving direct evidence of guilt, and not in cases based upon wholly circumstantial facts.

APPENDIX

Petitioner herein appends to this petition a copy of the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

WESLEY R. ASINOF,
Attorney for Petitioner,
419 Atlanta National Building,
Atlanta, Georgia.

JUDGMENT

Extract from the Minutes of March 1, 1957.

No. 16285

JOHN ELMER INGRAM AND ROBERT STEPHENS POSS,

VERSUS

UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

On consideration where, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16285

JOHN ELMER INGRAM AND ROBERT STEPHENS POSS,

Appellants,

VERSUS

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Northern District of Georgia

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(March 1, 1957.)

Before RIVES, TUTTLE and JONES, Circuit Judges.

PER CURIAM: The appellants, John Elmer Ingram and Robert Stephens Poss, were jointly indicted and convicted of possession of unstamped liquor, 26 U.S.C.A. §5004, and of its removal, deposit and concealment, 26 U.S.C.A. §7206 (4). Ingram was given a sentence of a year and a day and Poss was sentenced for six months. They appeal.

Officers came upon a 1937 Ford car behind which three men were crouched. As the officers approached the men ran. One got away. Another was Poss who was caught. The third, wearing a brown suede jacket, stumbled and fell. The officer, pursuing Poss, lost sight of the man in the brown suede jacket. Soon after, the other officer found a man stooping in a hole. This man was wearing a brown suede jacket, was breathing hard as if from running, and had scratched hands and soiled clothing. He was Ingram. In the trunk of the car were fifteen gallons of untaxed moonshine whiskey and twenty-five more gallons were on the ground at the place where it was parked. Poss said he wished the officer had caught someone else, that he was just down there helping. Ingram asked the officer to make a state case instead of a Federal case. The Ford had a big motor in it and an officer, a Treasury Department investigator, mentioned that the investigators might want to use the Ford to chase "whiskey cars". Ingram told him to go ahead and take the Ford and "wouldn't anybody say anything about it."

The appellants, citing *Vick v. United States,* 5th Cir. 1954, 216 F. 2d 228, urge that mere presence where untaxed liquor is found, coupled with flight, is not enough to sustain a conviction. They urge that the verdict against them is based upon conjecture and speculation rather than upon substantial evidence. In Vick there was a plausible reason given for the presence of the appellant in that case at the still where he was found. Here there was no reason given for their being at the car where the liquor was found. The circumstances of their crouching to avoid being seen, their flight and their statements upon being apprehended, provided substantial evidence of guilt. In *Lloyd v. United States,* 5th Cir. 1955, 226

F. 2d 9, this court quoted from *Glasser v. United States*, 315 U. S. 60, 62 S. Ct. 457, 86 L. Ed. 680, the following, "The verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it." This being so, the judgment is

AFFIRMED.

A True Copy:

Teste:

(Signed) EDWARD W. WADSWORTH,

Clerk of the United States Court of Appeals for the Fifth Circuit.

(SEAL)

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 946

JOHN ELMER INGRAM AND ROBERT STEPHENS POSS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 6) is reported at 241 F. 2d 708.

JURISDICTION

The judgment of the Court of Appeals was entered on March 1, 1957 (Pet. 6). A petition for a rehearing was denied on March 30, 1957. The petition for a writ of certiorari was filed on April 29, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the Court of Appeals applied a proper standard in determining the sufficiency of the evidence to support the verdict.

STATEMENT

Petitioners were convicted in the United States District Court for the Northern District of Georgia on two counts charging the possession of non-tax paid liquor and its removal, deposit, and concealment. Ingram was sentenced generally to imprisonment for a year and a day, and Poss to imprisonment for six months (R. 62–65). On appeal, the judgments were unanimously affirmed by the Court of Appeals for the Fifth Circuit.

The evidence for the Government may be summarized as follows:

Investigators, who were keeping a used car lot under observation, started to follow a 1939 De Soto which left the lot. They lost track of it for a short time and then came upon it parked side by side with a 1937 Ford. As the lights of the investigators' car illuminated the area, three men were seen squatted down behind the Ford (R. 7–8, 10–11, 12–14). As the investigators' car came fairly close, the three men ran (R. 8–9). One, Poss, was caught immediately (R. 8–9, 17). Another, in a brown suede jacket, was seen to fall by one of the officers (R. 9, 10). Ingram, dressed in a brown suede jacket, was found by a second officer about three minutes later in a stump hole, breathing hard, with scratches on his hands (R. 22–23).

There were fifteen gallons of non-tax paid whisky in the trunk of the Ford and twenty-five gallons on the ground near the car (R. 10, 11, 24, 27–29).

When Poss was apprehended, he said he wished they had caught someone else, that he was just down there helping (R. 10).

Ingram, after he was arraigned, asked the officer to prosecute in the State rather than the Federal court (R. 45–46). He also asked that he be notified when the Ford was sold (R. 45). When the officer said the Ford might be kept to chase whisky cars because it had a big motor, he said, "to go ahead and take the Ford, wouldn't anybody say anything about it" (R. 46).

ARGUMENT

Petitioners contend only that the Court of Appeals applied an incorrect standard in determining the sufficiency of the evidence when it said, in the words of this Court in *Glasser* v. *United States,* 315 U. S. 60, 80, that the "verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it." They argue that the rule does not apply to circumstantial evidence. Its enunciation in the *Glasser* case was, however, in regard to circumstantial evidence of the existence of the conspiracy. See also *United States* v. *Socony-Vacuum Oil Co.,* 310 U. S. 150, 254. The decision below is in accord with this Court's decisions, and no inter-circuit conflict is even alleged.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
Attorney.

MAY 1957.

U. S. GOVERNMENT PRINTING OFFICE: 1957